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April 23, 2012

via email and ECFS

Ms. Cathy Williams
Office of the Managing Director
Federal Communications Commission

Re: **Notice and Request for Comments**
OMB Control No. 3060-0761:
Section 79.1, Closed Captioning of Video Programming
CG Docket No. 05-231

Dear Ms. Williams:

Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI) respectfully submits these comments pursuant to the above-referenced request for comments on whether certain existing and proposed information collections by the Federal Communications Commission related to the closed captioning of video programming satisfy the requirements of the Paperwork Reduction Act of 1995 (PRA). TDI seeks to promote equal access to telecommunications for the more than 48 million Americans who are deaf, hard of hearing, late-deafened, or deaf-blind so that they may fully experience the important informational, educational, cultural, and societal opportunities afforded by the telecommunications revolution.

TDI has long participated in the Commission's development of closed captioning rules and was the lead petitioner for the rulemaking underlying the proposed information collections in this proceeding.¹ TDI supports the existing

¹ *Petition for Rulemaking of Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), et al.* (Jul. 23, 2004), <http://apps.fcc.gov/ecfs/document/view?id=6516288095> [hereinafter *TDI Petition*].

and proposed information collection requirements, which are necessary to vindicate “Congress’ goal that all Americans ultimately have access to video services and programs.”²

The existing information collections that the Commission seeks to extend include:

[P]etitions by video programming owners, producers and distributors for exemptions from the closed captioning rules, responses by viewers, and replies; complaints by viewers alleging violations of the closed captioning rules, responses by video programming distributors, and recordkeeping in support of complaint responses; and making video programming distributor contact information available to viewers in phone directories, on the Commission’s Web site and the Web sites of video programming distributors (if they have them), and in billing statements (to the extent video programming distributors issue them).³

We generally support the extension of these collections, which are necessary to implement the mechanics of the Commission’s closed captioning rules. While we believe that certain aspects of the Commission’s complaint-driven system for enforcing the captioning rules and its process for granting exemptions should be reformulated to reduce the burdens imposed on consumers, those issues are more appropriately addressed in the substantive context of a notice-and-comment rulemaking than through the PRA’s information collection approval process.

² *Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking*, CG Docket No. 05-231, 70 Fed. Reg. 56,150 (Sep. 26, 2005), http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-142A1.pdf, at ¶ 3 [hereinafter *NPRM*].

³ *Information Collection Being Reviewed by the Federal Communications Commission*, OMB Control No. 3060-0761, 77 Fed. Reg. 10,522, 10,523 (Feb. 22, 2012) [hereinafter *PRA Notice*].

Accordingly, TDI enthusiastically endorses the extension of the Commission's proposed information collections, including the possibilities that "petitions for exemption from the closed captioning rules should be permitted (or required) to be filed electronically through the Commission's Electronic Comment Filing System" and that "video programming distributors should be required to submit compliance reports to the Commission in cases where the final required amount of captioning post phase-in (e.g., pre-rule programming) is not 100 percent."⁴ These proposed collections, if adopted, would help to reduce the aforementioned burdens on consumers of the existing information collections.

Electronic Filing of Captioning Exemption Petitions and Responses

More specifically, the current non-electronic filing process for petitions for exemptions from closed captioning rules and responses to petitions poses a significant burden on commenters. We routinely file responses to exemption petitions, which we generate electronically.⁵ Rather than simply uploading the electronic file directly to the Commission through the Electronic Comment Filing System (ECFS), however, we must generate five print copies – one original, two copies for the Commission, one receipt copy for our files, and another copy to serve on the petitioner. We must then serve a copy of our comments to the petitioner by mail.

The Commission, however, discourages filing by mail, noting that it "continue[s] to experience delays in receiving U.S. Postal Service mail,"

⁴ *Id.*

⁵ E.g., *Opposition to Request to Exemption from the Commission's Closed Captioning Rules for First United Methodist Church, Jefferson City, Missouri*, Case No. CGB-CC-0135, CG Docket No. 06-181 (March 9, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021903021>.

encouraging delivery by hand or by commercial courier.⁶ Because it is less expensive, we hand-deliver our comments to the Commission—in large batches where possible. But the security staff at the Commission’s offices bars entry to the building with any envelopes, boxes, files, or other containers, and forbids disposal of containers in or near the offices. Accordingly, we must dispose of containers at some location away from the Commission’s offices, then transport large stacks of loose filings to the Commission, often through inclement weather. We must then wait, sometimes for a significant amount of time, to be cleared through security, where we stand literally right next to the Commission’s filing window.

Once we are finally able to deliver the copies of our comments, they are supposed to be delivered immediately to Commission staff at the Consumer and Governmental Affairs Bureau (CGB) for review and to other staff to be scanned and uploaded to ECFS so they can be viewed by the public. But our filings sometimes do not reach CGB staff even within a week of filing, and sometimes do not appear on ECFS for several weeks.⁷ And when comments are finally posted to ECFS, they are often misfiled with incorrect file numbers or filer information; for example, our most recent filing was erroneously attributed to “Telecommunications for the **Death** and Hard of Hearing Inc.”⁸ These delays

⁶ *Public Notice, Request for Comment: Request for Exemption from Commission’s Closed Captioning Rules, Cedar Street Baptist Church of God*, Case No. CGB-CC-1132, CG Docket No. 06-181, (April 12, 2012), http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0412/DA-12-578A1.pdf.

⁷ *See, e.g., Opposition to Request for Exemption from the Commission’s Closed Captioning Rules for New Testament Church*, Case No. CGB-CC-0537, CG Docket No. 06-181 (March 9, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021907132> (filed on March 9, 2012 and posted to ECFS on April 5, 2012).

⁸ *See Opposition to Request for Exemption from the Commission’s Closed Captioning Rules for Huntington Park Church of Christ*, Case No. CGB-CC-0341, CG Docket

and errors force us to reach out to Commission staff to locate lost filings or correct errors in filings.

This non-electronic filing process unnecessarily imposes significant burdens and expenses on commenters that could be entirely obviated if the Commission simply permitted petitioners and commenters to electronically file captioning exemption petitions and responses directly via ECFS—which is now permitted for substantially similar petitions and responses under the Commission’s Internet protocol captioning rules.⁹ Accordingly, we encourage the Commission to clear the path for allowing electronic filing of television closed captioning petitions and responses by extending the proposed information collection requirements.

Compliance Reports

Finally, TDI supports the extension of the Commission’s proposed requirement that video programming distributors submit compliance reports where the final required amount of captioned programming is not 100 percent.¹⁰ Without compliance reports, the only way that a consumer can verify if programming is in compliance is by “filing a complaint and requesting that the video programming provider disclose such documentation.”¹¹ Requiring video programming providers to keep track of and provide information on their compliance “is the most efficient and effective way to ensure that captioning is available.”¹²

No. 06-181 (April 19, 2012), <http://apps.fcc.gov/ecfs/comment/view?id=6017031674>.

⁹ See 47 C.F.R. § 79.4(d)(4), (6).

¹⁰ PRA Notice, *supra* note 3, at 10,523.

¹¹ TDI Petition, *supra* note 1, at 19.

¹² *Id.* at 18. See also *Standardized Program Reporting Requirements for Broadcast Licensees, Comments of TDI et al.*, MB Docket No. 11-189 (Jan. 27, 2012), <http://apps.fcc.gov/ecfs/document/view?id=7021857027>.

Respectfully submitted,

/s/

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[†] Counsel thanks Georgetown Law student clinician Allyn Ginns for her assistance in preparing these comments.